

Monday, 10 February 1947

- - -

INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Chambers of the Tribunal
War Ministry Building
Tokyo, Japan

PROCEEDINGS IN CHAMBERS

On

Paper No. 720 - Application on
behalf of ITAGAKI, Seishiro, for an
order for production of witnesses.

Paper No. 722 - Application on
behalf of KIMURA, Heitaro, for an
order for production of witness.

Paper No. 723 - Application on
behalf of the Prosecution for leave
to withdraw certain documents.

Before:

HON. SIR WILLIAM WEBB,
President of the Tribunal and
Member from the Commonwealth
of Australia

Reported by:

Sam Goldberg
Court Reporter
I. M. T. F. E.

Appearances:

FOR THE PROSECUTION SECTION:

MR. FRANK S. TAVENNER, Jr.

MR. CARLISLE W. HIGGINS

FOR THE DEFENSE SECTION:

MR. FLOYD J. MATTICE, Counsel for the
Accused ITAGAKI, Seishiro

FOR THE OFFICE OF THE GENERAL SECRETARY,
INTFE:

MR. CHARLES A. MANTZ, Clerk of the Court

MR. H. W. DELANEY, Deputy Clerk of the Court

The proceeding was begun at 0935.

- - -

THE PRESIDENT: This is p per No. 720, an application on behalf of the Accused ITAGAKI, for an order of production of five witnesses, three as to the conditions in Manchuria and the demands by the Manchurians for the independent state of Manchukuo and two as to conditions in the prisoner-of-war camp in Korea.

I have read carefully what you claim those witnesses can testify to. You do not know exactly what they are going to say?

MR. MATTICE: No, sir. We have not had an opportunity.

THE PRESIDENT: In the first instance, I suppose you will be satisfied for an order for facilities for interrogation. I will make an order for facilities for interrogation as prayed.

MR. MATTICE: As to the first three, that is?

THE PRESIDENT: As to the first three. About the other two, do you know what they are going to say?

MR. MATTICE: I have talked to Japanese counsel who were out at Sugamo.

THE PRESIDENT: I make an order for subpoena in the case of the two who are to testify as to

conditions in the Korean prison camps.

Now the one of Mr. Howard, can you take that?

That is all you are interested in?

MR. MATTICE: That is all I have.

THE PRESIDENT: I wonder when Mr. Howard will be here.

Well, if you care to make the application, you could make it for him, couldn't you?

MR. MATTICE: I think so. I was here the other day. I am not, of course, familiar with it.

THE PRESIDENT: Well, I know you do cooperate.

He is asking on behalf of the accused KIMURA for a witness called Lieutenant General TANAKA, Nobuo, N-o-b-u-o. He says this witness is in Rangoon in the custody of the British Army and is not charged as a war criminal and is familiar with the Kalagon case where some five hundred civilians were allegedly killed and tortured. I will make an order for facilities for the interrogation of that witness. That is paper No. 722.

The next application is Paper No. 723. It is by the prosecution for leave to withdraw certain affidavits which they obtained from the files of SCAP and which they say are required for other purposes. There is nobody here to support the application. I do not know what the attitude of the defense will be

on that.

MR. NATTICE: Last Monday both sides were here on that and we had some discussion of it. It seems that those documents are mostly documents that have not been introduced in evidence, although, as to some of them, excerpts have been. It is the thought of the defense that there may be in that material considerable to which they may wish to refer and may wish to use as evidence. Now, it is our thought that if they are taken back to headquarters, there would be considerable of a task for us to go down there and peruse the same and garner out of them whatever we may need. We have in mind in that respect that it takes a lot of time to go down. The transportation facilities are not very good, and to go down there and make such a perusal would on one occasion take a whole day whereas if the documents were still in the Clerk's office, we could do it in between times and not waste -- not lose so much time. That is our only thought about it. If there is anything in there that is of any value, we could make so much better use of it here than to have to go way down to headquarters.

THE PRESIDENT: You have a Chairman of the Defense Committee?

MR. NATTICE: Yes, sir.

THE PRESIDENT: Well, I will make the order for the return of these documents as prayed subject to the consent of the Chairman of the Defense Committee in each case. In the event of any disagreement, then the matter will be referred to me for decision.

MR. MATTICE: All right, sir.

THE PRESIDENT: They may want some of those papers urgently.

MR. MATTICE: No doubt most of them may as well be back down there.

(Whereupon, Mr. Tavenner and Mr. Higgins entered the room.)

THE PRESIDENT: I have just dealt with -- or just purported to deal with this application for the return of the SCAP affidavits in your absence. Mr. Mattice made representations on behalf of the defense. I decided to make the order in these terms: that the affidavits will be returned with concurrence of the Chairman of the Defense Committee. In the event of a disagreement, then the matter is to be referred to me for decision. I understand that the defense may require to peruse some of these affidavits before they are released to SCAP. If that order is satisfactory, I will leave it stay.

MR. HIGGINS: I think it is. The defense counsel are a member of the Legal Section. These

papers will be released back to their section which is the Legal Section. They had drawn a provision permitting the examination. Well, we could not consent to that because we are not a member of that section and they are. We have no objection to it.

THE PRESIDENT: I believe it is a case of transport again. They say the reason they do not want these documents to go downtown is because it is so hard to get at them again. But you will be satisfied with the order I propose?

MR. HIGGINS: I think so, sir.

THE PRESIDENT: Then the order as prayed.

The other matters you might have appeared on, I will give the order for interrogation of witnesses and the order that ITAGAKI wants, an order for subpoena for those two men in Sugamo who he says can testify to conditions in Korean prison camps.

MR. HIGGINS: I see no objection to that.

THE PRESIDENT: I have also given an order for facilities to interrogation on behalf of KIMURA. He wants Lieutenant General TANAKA to depose about conditions in Burma.

(Whereupon, at 0945, the proceeding was concluded.)